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FAX COVER SHEET

March 20, 2012

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March 19, 2012

VIA FAX AND REGULAR MAIL

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Re: United Federation of Teachers (UFT) and Board of Education of the City School District of the City of New York (DOE)

Dear Representatives:

My thanks to both of you for the thorough and edifying position statements you have provided regarding the Declaration of Impasse in the referenced matter, particularly in your responses to the clarifying questions I posed in my letters to you of January 19 and February 9, 2012. Having reviewed all the correspondence, I make the following findings:

1. DOE is correct, and not controverted, in its position that the choice as to which School Improvement Grant (SIG) model will be implemented is a matter within its discretion and not subject to mandatory collective negotiations.

2. Also uncontroverted, however, is that DOE, in May of 2011, filed an application with the State Education Department (SED) electing to participate in the SIG program under the Transformation and Restart models. A successful application under those models required modification of certain terms and conditions of employment, particularly the teacher evaluation procedure in identified "PLA" or persistently lowest achieving schools, which, consistent with the Taylor Law, could only be obtained through collective negotiations with UFT.

3. In July of 2011, DOE and UFT entered into an eleven page memorandum of agreement applicable to PLA schools in which DOE had chosen to implement the Transformation or Restart models. In it, the parties, inter alia, specifically agreed to negotiate an evaluation system that would be consistent with the requirements of Education Law §3012-c. On August 29, 2011, DOE's Chancellor and UFT's President

sent a joint letter in support of DOE's SIG application to SED's Commissioner, in which they reaffirmed that agreement.

4. Absent clear limiting language in such an agreement, the parties' failure to reach a negotiated agreement would trigger the impasse procedures under the Taylor Law. Here, not only was there no such limiting language, but the parties' agreement and joint letter specified that consistency with the requirements of §3012-c, which itself mandates Taylor Law negotiations regarding many of its aspects, included "all requirements in Education Law §3012-c or otherwise for negotiations between the UFT and the Department" (emphasis supplied). It appears that the parties therefore plainly contemplated that the full panoply of negotiating obligations would obtain, which includes the obligation to participate in the Taylor Law's impasse resolution procedures.

5. After numerous negotiating sessions failed to bring about an agreement regarding certain aspects of the evaluation procedure, on December 30, 2011, DOE's Chancellor informed SED's Commissioner that the parties would not be able to come to an agreement on an evaluation procedure. The Commissioner replied on January 3, 2012, informing the Chancellor that, because agreement had not been reached by SED's December 31, 2011 deadline, future SIG funding allocated to Transformation and Restart model schools was being suspended. On January 12, 2012, the Chancellor informed the Commissioner that DOE would seek to convert 27 of the 33 Transformation and Restart schools to the Turnaround model, which it claimed it could implement in accordance with the existing DOE/UFT collective bargaining agreement, that it would not seek SIG funding regarding the other six schools, and that it would seek to apply for funding under the Turnaround model at six additional PLA schools.

6. The crux of DOE's current argument is that, just as it was privileged, as a matter of management policy, to choose Transformation/Restart as the SIG model it would pursue, it is likewise privileged to change its mind, and now seek funding under the Turnaround model. It argues that since, in its opinion, the latter model does not require collective negotiations with the UFT, mediation or further bargaining with the UFT regarding the Transformation/Restart model is futile and moot, and that forcing it to negotiate regarding evaluation procedures under that model "would have the effect of making the DOE's SIG choice, a subject of negotiation."

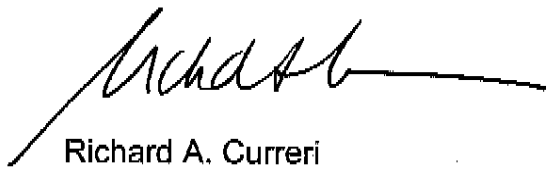
7. The question of whether DOE can change its mind regarding the SIG model of choice consistent with statutory or contractual obligations, however, is not before me. At this point, it is clear from both parties' papers that DOE's July 2011 application for SIG funding pursuant to the Transformation and Restart models is still pending before the SED. The correspondence makes it clear that: (a) the SED Commissioner's January 3, 2012 letter suspending allocated federal funding did not amount to an outright dismissal, rejection or termination of the application itself; both parties reference the fact that other SIG applicant school districts in the State, which similarly did not reach agreements on evaluation procedures with teacher unions prior to December 31, 2011, did reach agreements subsequent to that date triggering SED approval and the resumption of funding; (b) no claim was made by DOE that it withdrew the July 2011 application from SED consideration; (c) DOE concedes that, although over two months have ensued since the Chancellor informed the Commissioner of

DOE's intent to submit a Turnaround application, it has not yet done so. Obviously, then, such an application has not yet been approved by SED, and any questions concerning negotiating obligations which might arise from a Turnaround application, or from conflicting SIG applications, are premature. There being nothing before me to evidence that DOE has formally changed its mind, or that SED no longer has a live Transformation/Restart application before it for possible consideration, neither then is there an issue before me regarding the consequences of a change in SIG funding models on the parties' impasse obligations.

8. As such, given that the parties' July 2011 agreement to negotiate an evaluation procedure, by its terms, is still in effect, as none of the three conditions for termination (end of the 2012-13 school year; election by either party to terminate at the end of the present school term; or negotiation of a new evaluation procedure applicable to the entire teacher bargaining unit) has yet occurred, and given that the parties have unquestionably bargained to impasse regarding evaluation procedures under the Transformation/Restart model, I find that assignment of a mediator at this juncture is appropriate.

Again, I thank both of you for your cogent analysis of a seemingly arcane issue. A mediator appointment letter will follow under separate cover.

Very truly yours,



Richard A. Curreri

Cc: James Hanley, Commissioner, OLR
Philip Maier, Chief Regional Mediator
Michael Mulgrew, President, UFT
Dennis M. Walcott, Chancellor, DOE